IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.1143 OF 1996 AND WRIT PETITION NO. 8082 OF 1998

T. Ganesan
Field Assistant (N.M.R.),
O/o. the District Environment
Engineer, Tamil Nadu Pollution
Control Board,
No.244, Tiruchendur Road,
Tirunelveli. .. Petitioner in both WPs

-Vs-

1. The Chairman,
Taminadu Pollution Control Board,
Guindy, Madras 600 032.

2. The District Environmental Engineer,
Tamilnadu Pollution Control Board,
244, Tiruchendur Road,
Madras 600 032. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V. Dhanapalan

For Respondents 1-2 : Mrs.Rita Chandrasekaran

:J U D G M E N T

The petitioner has been working as Field Assistant on N.M.R. basis under the Tamil Nadu Pollution Control Board in the office of the District Environmental Engineer, Tirunelveli. His initial appointment as NMR was done on the basis of an interview conducted by the Board from among the candidates sponsored by the employment exchange. He joined as Field Assistant on 1.2.1992. He continued in the above capacity for 4 years with intermittent break of one or two days after every 89 days of work. He filed a representation for regularisation of his service with effect from 1.2.1992 and since the application was not disposed of, he filed W.P.No.1143 of 1996 seeking for writ of Mandamus directing the respondents to regularise the service with effect from 1.2.1992. During pendency of the aforesaid writ

petition, as per the proceedings dated 29.5.1998, an order of termination was issued. Thereafter the petitioner filed W.P.No.8082 of 1998 challenging the order of termination and an order of interim stay was granted on 16.6.1998 and with effect from 19.6.1998, the petitioner was reinstated. Subsequently, during pendency of the aforesaid two writ petitions, the respondents have passed order of regularisation regularising the services of the petitioner with effect from 28.10.1999. In the above background of undisputed facts and events, the contentions raised in the two writ petitions are to be considered.

2. The question raised in W.P.No.8082 of 1998 is no longer necessary to be considered as in the meantime, the petitioner after being reinstated, has been regularised in service. Therefore, the order of termination has lost its efficacy.

3. Learned counsel appearing for the respondents has also submitted that since the petitioner has been regularised from 28.10.1 998, the prayer in W.P.No.1143 of 1996 has become infructuous and the questions need not be decided.

4. Learned counsel appearing for the petitioner on the other hand has submitted that the petitioner has been regularised with effect from 28.10.1999 along with many other persons, who were appointed subsequently and junior to him. It has been submitted that the petitioner should be regularised with effect from the date of his initial appointment.

5. Learned counsel appearing for the petitioner has placed reliance upon Tamil Nadu Industrial Establishemnts (Conferment of permanent status to Workmen) Act and has contended that after completion of 480 days, the petitioner should have been made permanent. It is not disputed that the petitioner had been appointed as a N.M.R. with break of one or two days after 89 days. Therefore, it is not possible to hold that the petitioner had continuously worked for 480 days on temporary basis. The provisions contained in the said Act would not be applicable to the petitioner.

6. Learned counsel for the petitioner has also contended that the very fact that the petitioner had been engaged with effect from February 1992 for more than 7 years only with artificial break of 1 or 2 days would clearly show that there is a requirement for the post. The petitioner had been initially engaged after undergoing a selection process and after being sponsored by the employment exchange. There is also no dispute that the petitioner has the required qualification for the post and therefore, the petitioner should be regularised. For the aforesaid purpose, learned counsel for the petitioner has placed reliance upon the decision reported in 1990(1) SCC 361 (BHAGWATI PRASAD v. DELHI STATE MINERAL DEVELOPMENT CORPORATION).

7. The proceedings of the Tamil Nadu Pollution Control Board taking a decision to regularise various persons is on record. It shows that the individuals concerned, including the petitioner,
 . . have been recruited through the employment exchange and as per

the rules and regulations they are working as Daily wages/ Consolidated pay field Assistants. They have instituted Cases against the board for reguarisation of services. Since they have undertaken to withdraw the case if they are regularised in the Board s Services, and as the appointments are made through the employment Exchange and as they have the qualification to hold the post, their services are regularised in the post of Field Assistant from the date of insurance of this Proceedings in the pay scale of Rs.3200-85-4900. Their Salary is fixed from the date of appointment in the regular time scale of pay of Rs.3200-85-4900 as under . . .

From the above, it is apparent that the petitioner had been recruited through the employment exchange as per the rules and regulations of the Board, and therefore, the only question is whether the date of regularisation is to be given effect from 28.10.1999 or from 1.2.1992

as claimed by the petitioner or from any other date.

8. It is of course true that in the proceedings, there is a reference that such persons have undertaken to withdraw their cases if they are regularised. Such an undertaking, if any, cannot be held against the petitioner. A person trying to enforce his right through a court of law should not be forced to withdraw his case on the pretext of giving some relief. It is another matter that if a compromise is effected and the petition for compromise is filed in accordance with law, such compromise can be given effect to. However, a mere recital that a party has agreed to withdraw a case if a particular relief is given would not stand in the way of giving any other relief to such a party if he is otherwise entitled. It has been asserted by the petitioner that he has been regularised along with others who are junior to him and were subsequently selected. The petitioner had earlier made a representation and such representation had remaned unheeded by the employer which made the petitioner to file writ petition. As already noticed, there was no irregularity in the appointment of the petitioner at the initial stage and he is otherwise eligible and had been selected after being sponsored by the employment exchange. The Division Bench decision of this Court reported in 2002(4) CTC 385 (L. JUSTINE AND ANOTHER v. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, CHENNAI AND TWO OTHERS) would not applicable to the present case. There is no irregularity in the initial appointment of the petitioner. The other decisions cited by the respondents relate to question of regularisation of the persons whose initial appointment were irregular and did not have requisite qualification or there was absence of vacancy and need not be noticed specifically. In the present case, those factors are not applicable.

9. As apparent from the Board Proceedings, the petitioner had the requisite qualification, his name had been sponsored through employment exchange and he had been selected in accordance with the Rules. Nothing has been brought on record to indicate that initial appointment of the petitioner was irregular in any manner. Therefore, the petitioner should have been regularised earlier atleast from the date of filing of the writ petition, i.e., from February, 1996, if not from the initial date of joining. In the counter affidavit filed by the Board, the question of financial condition of

the respondent Board has been indicated. This is an aspect which cannot be altogether ignored.

10. Having regard to all these aspects, I think interest of justice would be served by giving a direction that the petitioner should be deemed to be appointed on regular basis with effect from February, 19 96. Increments should be calculated on that basis and shall be payable after 28.10.1999. However, no other amount would be payable towards increments prior to said date. The entire period from February, 1 996 also shall be taken into account for seniority and pension.

11. Subject to the aforesaid directions, the writ petitions are disposed of. No costs.

Index : Yes
Internet : Yes
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To

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